IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 6-3-2002

CORAM

THE HONOURABLE MR.JUSTICE M.CHOCKALINGAM

C.R.P.No.2146 of 1998

Srinivasan alias Balaji .. Petitioner

-vs-

Jayalakshmi @ Vidya .. Respondent

This civil revision petition is preferred under Article 227 of the Constitution of India against the order made in SR No.4112 of 1995 dated 9.9.1996 by the Principal Judge Family Court, Madras.

For Petitioner : Mr.R.Sundara Rajan
For Respondent : Mr.Dilipkumar
: ORDER

What is challenged herein is an order of the learned Principal Judge, Family Court, Madras returning an Original Petition for noncompliance of certain defects, which were originally pointed out therein.

2. From the available materials, it could be seen that the petitioner herein filed an Original Petition for annulment of his marriage with the respondent herein, which took place on 7.7.1995 by a decree of nullity and void. After presentation of the said petition, it was returned on number of occasions. At one stage, it was returned stating that a specific paragraph in respect of cause of action was not stated therein, and hence, it could not be taken on file. An endorsement was made by the learned counsel for the petitioner in the said petition that the same was not necessary. Under such circumstances, the matter was placed before the Principal Judge of Family Court, and the learned counsel for the petitioner was also heard. The Principal Judge, by an elaborate order, has found that it was very necessary and essential to make mention of the cause of action by way of a separate paragraph and returned the original petition for compliance. The return of the said petition by the Principal Judge of Family Court has culminated in this revision.

3. The learned counsel appearing for the petitioner would urge that the original petition should not have been returned on the technical ground; that the Rules framed under the Hindu Marriage Act, 1955 and under the Family Court Act, 1984 do not con any specific format for presenting the original petition; that there is no provision in any law applicable to the facts of the case that a separate paragraph is required for disclosing the cause of action; that the judicial pronouncements that were brought to the notice of the court

below were not taken in the proper perspective of the matter; that the lower court failed to understand the scope and meaning of the term cause of action interpreted in those decisions; and that the lower court was not proper in stating that the forms could not be taken as decisive, but a cause of action was necessarily to be stated separately. Added further, the learned counsel that the original petition while contained all the necessary and requisite facts to arrive at a decision, a separate cause of action paragraph was not at all necessary; that the return of the original petition has caused much prejudice thereon, and hence it has got to be set right by ordering the same to be taken on file.

4. The learned counsel appearing for the respondent would contend that he has no say in the matter, and leaves the same to the decision of the court.

5. At the outset, the court is of the view that the court below without insisting on the technicalities should have numbered the original petition. That apart, as rightly pointed out by the learned counsel for the petitioner, the Rules that have been framed by this Court under the Hindu Marriage Act, speaking about the contents of the petition, do not state anywhere that it should contain a cause of action, and even in the Code of Civil Procedure, the cause of action was not required to be given by way of a separate paragraph. As could be seen from the copy of the original petition, filed by the petitioner herein before the lower forum, it contains what are all the requisite facts necessary to arrive at a decision.

6. The learned counsel for the petitioner brought to the notice of the court that in the Rules made by the High Court of Bombay, it has been specifically stated that every petition should contain contents of the petition in addition to the particulars required to be given under Order 7 Rule 1 of Code of Civil Procedure and Sec.21 of the Act, and that those provisions are not available in the Rules framed by this Court as to the contents of the petition. Apart from that, the forms do not require a cause of action to be separately given. Hence, the view of the Family Court that the forms contained both in Civil Procedure Code as well as in the Hindu Marriage Act were to be construed as model forms and that the petitioner should not be allowed to say that the cause of action paragraph need not be furnished was erroneous. Once all the necessary facts, which would be suffice to arrive at the decision over the controversy between the parties, and the requisite contents as per the forms stipulated by the Rules are stated in the petition, then, there is no need to give a separate cause of action paragraph in the petition. It should not be made as a "must" that a separate cause of action paragraph should be given. In the instant case, the original petition was not returned for any other reason, except the one stated supra. Therefore, the return of the original petition filed by the petitioner herein before the lower court cannot be said to be either proper, or legally found. Hence, the order of the lower court has got to be set aside. The court below is directed to take the matter on file and proceed with further in accordance with law.

7. In the result, with the above direction, this civil revision petition is allowed, setting aside the order of the court below. There shall be no order as to the costs.

Index: yes/no

Internet: yes 6-3-2002

nsv/

To:
The Principal Judge,
Family Court,
Madras.

M.CHOCKALINGAM, J.

C.R.P.No.2146 of 1998

Dt: 6-3-2002